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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,981	08/16/2004	Ian Craig Barkhouse	00124-01087	4980
23416	7590	09/11/2006	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP			LIU, JONATHAN	
P O BOX 2207			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			3673	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/710,981

Applicant(s)

BARKHOUSE, IAN CRAIG

Examiner

Jonathan J. Liu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-11 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/16/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/22/2006 have been fully considered but they are not persuasive.
2. Regarding Applicant's arguments on pages 6-7 of the remarks, wherein the invention to Liu is not a "border" assembly, Liu discloses that supporting panels (40, 42, 44) may be lower than the height of the frame (col. 5, lines 6-9); thereby, when a mattress core is rested upon the panels, the assembly of Liu would inherently surround the mattress (e.g. border assembly).
3. In response to applicant's argument on pages 8-9 of the remarks, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).
4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, because Liu and O'Connell are from the same field of endeavor, i.e. frame/border assemblies, it would have been known to one having ordinary skill in the art at the time the invention was made to combine the references.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu (US 4,788,727). Liu discloses a border assembly for a mattress or bedding material, said assembly comprising a first side rail (20), a first end rail (comprising 28 and 30) pivotably attached to said first side rail, a second side rail (26) pivotably attached to said first end rail, and a second end rail (comprising 22 and 24) pivotably attached to said second side rail and said first side rail, wherein said side rails and said end rails form a collapsible border assembly in which when collapsed, the first end rail and the first side rail are generally aligned end to end (the rails' ends are even at member 62 when collapsed) in a first row and the second side rail and second end rail are generally aligned end to end (the rails' ends are even at member 62 when collapsed) in a second row, and when opened the first and second side and end rails define a center opening to accommodate a core section of the mattress or bedding material (col. 5, lines 6-9).

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Regarding claim 16, Liu discloses that the assembly may support any type of mattress (col. 3, lines 32-36).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-5, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu (US 4,788,727) in view of O'Connell (US 2003/0000021). Liu discloses the invention of claim 1. However, Liu does not disclose wherein said rails are of polyurethane foam. O'Connell discloses said rails are of polyurethane foam (para. 0026). Liu and O'Connell are analogous because they are from the same field of endeavor, i.e. frame/border assemblies. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to make the rails of Liu of polyurethane foam. The motivation would have been to provide an inexpensive alternative mechanical expedient to the wood rails of Liu. Therefore, it would have been obvious to modify the rails of Liu as specified in claim 2.

With regards to claim 3, the modified invention includes a hinge (Liu: 62) between said first end rail and said first side rail allowing pivotal movement.

Regarding claim 4, the modified invention includes a hinge (Liu: 62) between said second side rail and said first end rail allowing pivotal movement.

Regarding claim 5, it is well known in the bedding/support art that hinges may be made of metal, plastic or any other suitable material. It would have been obvious to one of ordinary skill in the art to form the hinges of Liu from plastic.

In regards to claim 15, Liu discloses a mattress kit comprising a mattress core section (14); a collapsible border assembly having first (20) and second (26) side rails pivotably attached to first 28 and 30) and second (22 and 24) end rails, wherein, when opened, said first and second side and end rails define a center opening to accommodate the mattress core section (col. 5, lines 6-9), and when collapsed, the first end rail and the first side rail are generally aligned end to end in a first row (the rails' ends are even at member 62 when collapsed) and the second side rail and second end rail are generally aligned end to end in a second row (the rails' ends are even at member 62 when collapsed). O'Connell et al. discloses a collapsible border assembly wherein top (70) and bottom (72) sheets are attached to said rails. Liu and O'Connell are analogous because they are from the same field of endeavor, i.e. frame/border assemblies. At the time the invention was made, it would have been obvious to modify the assembly of Liu to include a bottom sheet. The motivation would have been to adhere said rails together. Therefore, it would have been obvious to modify the assembly of Liu as specified in claim 15.

Regarding claim 17, the modified invention includes a mattress (Liu: 14).

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liu (US 4,788,727) in view of O'Connell (US 2003/0000021). Liu as modified by O'Connell, inherently discloses the method of claim 18 of making a mattress that incorporates a

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mattress border assembly, comprising: expanding a collapsible border assembly having first (Liu: 20) side rails and second (Liu: 26) side rails attached to first end rails (Liu: 28 and 30) and second end rails (Liu: 22 and 24) from a collapsed position in which the first end rail and the first side rail are generally aligned end to end in a first row (the rails' ends are even at member 62 when collapsed) and the second side rail and the second end rail are generally aligned end to end in a second row (the rails' ends are even at member 62 when collapsed) to an open position wherein said side rails and end rails define a center opening; inserting a mattress core (Liu: 14) into said center opening (col. 5, lines 6-9), whereby the collapsible border assembly forms a perimeter frame around said mattress core; attaching a top sheet (O'Connell: 70) onto top walls of said side rails and end rails; and attaching a bottom sheet (O'Connell: 72) onto bottom walls of said side rails and end rails. The preceding steps are all obvious over the invention of Liu as modified by O'Connell. It has been noted that Applicant agrees with examiner's previous assertion that encasing said mattress core, said collapsible border assembly, and said top and bottom sheets with a fabric or casing, as well known in the bed art and obvious as disclosed by Brooks et al. (US 2004/0172754).

Allowable Subject Matter

10. Claims 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no motivation to modify the first side rail and first end rail by cutting a mitered end wall in each of said rails to form a hinge.

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Claims 7-11 are allowed. The prior art on record does not teach to pivotally attach mitered end walls with square end walls to form the claimed invention of the border assembly.

Claim is 19 allowed. There is no motivation to modify the first side rail and first end rail by cutting a mitered end wall in each of said rails to form a hinge.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

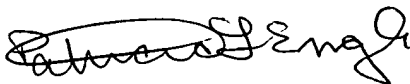
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan J. Liu whose telephone number is (571) 272-8227. The examiner can normally be reached on Monday through Friday, 8 am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jonathan J Liu
Examiner
Art Unit 3673



Patricia Engle
Supervisory Primary Examiner
Art Unit 3673

9-5-06
